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December 7, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**EX PARTE  
PRESENTATION**

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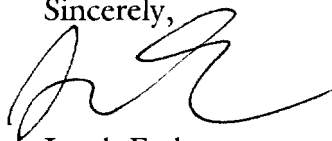
**Re: CC Dkt. No. 01-277**

Dear Ms. Salas:

On December 6, 2001, Dave Scott, President and CEO, and John Ivanuska, VP Regulatory & Carrier Relations, both of Birch Telecom, Inc., and Robert Felgar and the undersigned of this law firm met with Chairman Michael Powell and Kyle Dixon. We discussed BellSouth's application for Section 271 authority in Georgia and the recent ex partes filed by BellSouth in support of the application. In particular, we discussed the deficiencies in BellSouth's OSS and performance reporting experienced by Birch. The attached materials, which summarize our presentation, were distributed at the meeting.

If you need any further information, or have any questions, please do not hesitate to call me.

Sincerely,



Jacob Farber

Enclosure

cc: Chairman Michael Powell  
Kyle Dixon, Esq.

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# Birch Telecom

BellSouth Georgia 271 Application

**December 5-6, 2001**

David E. Scott -- President & CEO

John Ivanuska -- Vice President Regulatory & Carrier Relations

# Who is Birch Telecom?

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A multi-region provider of local and long distance, voice and facilities-based data services

- Over 275,000 lines in Southwestern Bell territory; voice services over UNE-P, DSL over Birch's own facilities
- Next-generation data facilities deployed in Southwestern Bell region, with 160 collocations and ATM broadband network; softswitches to be deployed
- Nearly 50,000 UNE-P lines gained since its launch in the BellSouth region in early 2001
- Birch currently operates in Georgia, Tennessee, Alabama, Mississippi, North Carolina and South Carolina
- Birch launched residential UNE-P offerings in September 2001

# BellSouth's Georgia 271 Application Must Be Denied

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- BellSouth fails to satisfy Checklist Item No. 2 -- nondiscriminatory access to unbundled network elements
  - Failure to measure up to FCC precedent
  - Consistently poor flow-through performance
  - High and lingering instances of internal service order errors
  - General unwillingness to open market to competition
  - Data contained in the application lacks credibility

# Consistently Poor UNE Flow Through



- The percentage of Birch's mechanized orders that are designed to flow-through but fall out to be manually input by BellSouth has been consistently poor

<b>March:</b>	<b>28.23%</b>	<b>July:</b>	<b>31.19%</b>
<b>April:</b>	<b>36.15%</b>	<b>August:</b>	<b>39.25%</b>
<b>May:</b>	<b>46.06%</b>	<b>Sept.:</b>	<b>39.66%</b>
<b>June:</b>	<b>37.46%</b>	<b>Oct.:</b>	<b>31.09%</b>

- Unlike Verizon, BellSouth has never empirically demonstrated a “steady improvement” in its flow-through performance
- Unlike Verizon, BellSouth has never empirically demonstrated a commercial capability to achieve parity levels of flow-through
- The Georgia benchmark levels of flow-through are not sufficiently demanding (nor are the penalties for a “miss”)
  - GA at 85%; VZ at 95%; SBC at “Parity with Retail”

# Service Order Accuracy Problems



- BellSouth introduces errors on an intolerable percentage of the Birch orders that they touch
  - In October, 30% of Birch's orders that were manually handled by BellSouth were inaccurate because of errors introduced by BellSouth
  - Less than 1% of Birch's mechanized orders contain errors introduced by BellSouth
- BellSouth's own data shows that service order accuracy performance has been consistently below the benchmark (95% for UNE non-designed)

**March: 87.35%**

**April: 78.32%**

**May: 93.05%**

**June: 76.92%**

**July: 70.69%**

**August: 64.36%**

**Sept. 79.33%**

**Oct.: 90.48%**

**(continued)**

# Service Order Accuracy Problems (continued)

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- BellSouth's reported results for service order accuracy are not trustworthy and differ significantly from Birch's actual experience
- Since April 2001, Birch has consistently expressed its concern regarding BellSouth's poor service order accuracy results to multiple levels of management at BellSouth, and to the Georgia PSC -- all to no avail
- **Result: Birch's provisioning expenses are 48.93% higher than necessary due to BellSouth's poor flow-through and service order accuracy**

# A General Unwillingness to Open Market to Competition

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- Birch's concerns are frequently passed from one BellSouth organization to another with none taking responsibility. Predictably, Birch's issues are often never resolved
- BellSouth's Change Control Process doesn't work
  - BellSouth's own pre-release testing is deficient
  - Post-release defects go unresolved for months and months
  - BellSouth encourages internal escalation and PUC solicitation as a way to get action
- The Flow-Through Task Force, ordered by the Georgia PSC, has accomplished very little, i.e., it has consistently failed to address CLEC requests for automation that would yield flow-through improvements
- BellSouth's words do not match their deeds, and this is likely only to worsen in a post-271 environment



# BellSouth's Performance Fails to Meet Established FCC Standards

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- BellSouth's Georgia 271 application, and its actual performance, is materially deficient compared to what the Commission required for Verizon and SBC "first states" (New York and Texas)
- As a practical matter, an RBOC's "first state" approval by the Commission establishes the acceptable maximum benchmark for all subsequent applications by that RBOC and enables lower levels of performance to be approved
- If approved, BellSouth's Georgia application would establish a very low benchmark for BellSouth to meet in subsequent applications -- a lower benchmark than in any other state where a 271 application has been granted
- Birch supports 271 applications when such support is warranted -- Birch supported SBC's 271 applications

# BellSouth's Actions Stifle Birch's Growth



- BellSouth's sub-par performance in the aforementioned areas creates barriers to growth by increasing Birch's costs and perpetuating operational inefficiency
  - In contrast to its operations in the Southwestern Bell region, in the BellSouth region Birch provides only the simplest of UNE-P based voice services today
  - Birch's high provisioning costs caused by BellSouth's OSS deficiencies makes it unattractive to enter into additional BellSouth markets
  - Birch cannot transition to a facilities-based network and offer its customers more complex services as long as BellSouth's OSS remains deficient, and as long as BellSouth is unwilling to open its network to competition

# BellSouth's Misreporting of Data Calls Into Question the Reliability of its Application

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- BellSouth's application contains a startling (and proven to be erroneous) improvement in order flow through percentages compared to prior months
- Birch's scrutiny of BellSouth's own data revealed that the flow through percentages filed by BellSouth were erroneous
- BellSouth subsequently restated the data, bringing the flow through percentages in line with earlier months' poor results, i.e., aggregate UNE flow through was filed at 90%, but revised to 67.29%
- Claims of immateriality and/or irrelevance by BellSouth only serve to illuminate BellSouth's underlying motive--a sweetheart deal by this Commission

# Birch Message....



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- Birch has no hidden agenda with respect to this proceeding; Birch is not interested in denying BellSouth long distance entry
  - Birch has proven its ability to support an RBOC's 271 application once a viable operational framework is in place--SBC achieved this prior to Birch's support of 271 applications in Kansas, Oklahoma and Missouri
  - Unless BellSouth is required to improve its deficiencies enumerated in the record, competition will be unsustainable in BellSouth's region post-271
  - It's not even a close call--BellSouth's failure to satisfy Checklist Item No. 2 warrants the Commission's denial of the current application